IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.134 OF 2005

Mahesh Dadasaheb Kadam ...Applicant

vs.

State of Maharashtra ...Respondent

Mr.Milind Deshmukh for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 23,2005.

P.C.:

1. Heard learned Counsel appearing for the parties. The Applicant is the accused who has been convicted for offence punishable under Section 304-A of the I.P.C. as well as an offence punishable under Section 3(1) read with Section 181 of the Motor Vehicles Act. The learned Judicial Magistrate sentenced the Applicant to suffer R.I. for one year and to pay fine of Rs.1000/-. In default he was directed to undergo simple imprisonment for one month. This sentence was awarded for the offence under Section 304-A of the Code. He was directed to make payment of fine of Rs.200/- for offence under Section 3(1) read with Section 181 of the Motor Vehicles Act and in default to suffer simple imprisonment for 7 days.

2. An Appeal was preferred by the accused before the Sessions Court. The learned 3rd Additional Sessions Judge, Pune reduced the sentence in so far as offence under Section 304-A is concerned to R.I.for six months. The conviction and the

the sentence for the other offence was maintained.

3. The learned Counsel appearing for the Applicant submitted that there was no convincing or cogent evidence on record to convict the Applicant. He submitted that there was no evidence on record to show that there was any rash or negligent act on the part of the Applicant. He submitted that considering the allegations made by the prosecution, the punishment of undergoing R.I. for six months is harsh and disproportionate. He submitted that the Applicant is disabled to some extent as he does not have two fingers of his left hand and therefore the Applicant was entitled to leniency.

4. The learned A.P.P. submitted that the Courts have considered the evidence on record and especially the fact that the Applicant was driving auto rickshaw without having a valid driving licence. He submitted that the law laid down by the Apex Court is very clear and no leniency can be shown.

5. I have considered the rival submissions. The scope of Revision Application is very limited. In Revision Application this Court cannot re-appreciate the evidence.

6. The allegation against the Applicant is that he drove the auto rickshaw in a rash and negligent manner which resulted in death of a student by name ‘Karishma’. The Courts below have appreciated the oral and documentary evidence on record and

have come to the conclusion that it cannot be said that it was merely an error of the judgment on the part of the Applicant. The finding recorded is that the Applicant was driving auto rickshaw at full speed at the time of incident. The Courts noted that the bus coming from opposite side stopped near the school and the school children alighted from the bus were crossing the road. Notwithstanding the knowledge of this, the Applicant was driving the auto rickshaw in a very high speed. Moreover, the Applicant could not produce his driving licence.

7. This is not a case where material evidence has been ignored by any of the Courts below. There is no perversity in the Judgments of the Courts below. There is no manifest error of law committed by the Courts below.

8. As a matter of fact, the learned Additional Sessions Judge, Pune has shown leniency by reducing the punishment to six months from one year. The Apex Court held that in case of offence under Section 304-A of the I.P.C. there has to be a deterrent element in punishment. The Apex Court held that no leniency should be shown to the offenders who have committed offence under Section 304-A of the I.P.C.

9. In this view of the matter, there is no merit in the Revision and the same is rejected.

JUDGE